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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION</b>		
Counsel For The State Bar  <b>Patrice Vallier-Glass</b> <b>Deputy Trial Counsel</b> <b>845 S. Figueroa St.</b> <b>Los Angeles, CA 90017</b> <b>(213) 765-1180</b>  Bar # <b>305900</b>	Case Number(s): <b>16-O-16470-YDR</b> <b>16-O-16750</b> <b>18-O-11342 (inv)</b> <b>18-O-11950 (inv)</b> <b>18-O-12457 (inv)</b>	For Court use only   <div style="text-align: center;"> <b>FILED</b>  <b>JUN 14 2018</b>  <b>STATE BAR COURT</b>  <b>CLERK'S OFFICE</b>  <b>LOS ANGELES</b> </div> <div style="text-align: right;">E.A.</div>
In Pro Per Respondent  <b>Benjamin A. Eilenberg</b> <b>Law Offices of Ben Eilenberg</b> <b>3600 Lime St. Ste. 125</b> <b>Riverside, CA 92501-0911</b>  Bar # <b>261288</b>	<div style="font-size: 2em; font-weight: bold;">PUBLIC MATTER</div> <div style="display: flex; justify-content: space-between; align-items: center; margin-top: 10px;"> <div>kwiktag®</div> <div>237 304 597</div> </div> 	
In the Matter of: <b>BENJAMIN A. EILENBERG</b>  Bar # <b>261288</b>  A Member of the State Bar of California (Respondent)	Submitted to: <b>Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

**Note:** All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

### A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **November 25, 2008**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **16** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☒ Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
  - ☐ Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
  - ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - ☐ Costs are entirely waived.

**B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.**

- (1) ☐ **Prior record of discipline**
- (a) ☐ State Bar Court case # of prior case
  - (b) ☐ Date prior discipline effective
  - (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
  - (d) ☐ Degree of prior discipline
  - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) ☐ **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) ☐ **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.
- (4) ☐ **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5) ☐ **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6) ☐ **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

- (8) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. **See page 13.**
- (9) ☒ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. **See page 13.**
- (10) ☐ **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) ☒ **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See page 12.
- (12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) ☐ **Restitution:** Respondent failed to make restitution.
- (14) ☐ **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) ☐ **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standards 1.2(i) & 1.6]. Facts supporting mitigating circumstances are required.**

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur.
- (2) ☐ **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct or to the State Bar during disciplinary investigations and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively reasonable.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the

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product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.

- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**No Prior Record of Discipline, see page 13.**

**Pretrial Stipulation, see page 13.**

**D. Discipline:**

(1) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of **one year**.

- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1) Standards for Attorney Sanctions for Professional Misconduct.
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:

(b) ☒ The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent must be placed on probation for a period of **one year**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) ☒ **Actual Suspension:**

(a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of **90 days**.

- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct

- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:

**E. Additional Conditions of Probation:**

- (1) ☐ If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and present learning and ability in the general law, pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- (2) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.

☐ No Ethics School recommended. Reason: .

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- (9) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) ☐ The following conditions are attached hereto and incorporated:
- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input type="checkbox"/> Financial Conditions             |

**F. Other Conditions Negotiated by the Parties:**

- (1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- ☐ No MPRE recommended. Reason: .
- (2) ☒ **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) ☐ **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) ☐ **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension: .
- (5) ☐ **Other Conditions:**

IN THE MATTER OF: BENJAMIN A. EILENBERG

CASE NUMBERS: 16-O-16470, 16-O-16750, 18-O-11342, 18-O-11950,  
18-O-12457

9. On January 27, 2016, an opposing counsel filed a *Notice of Motion and Motion to Expunge Notice of Pendency of Action*. The court set a hearing on the motion for February 29, 2016.

10. On February 17, 2016, respondent stated in an email to an opposing counsel, "Yes, I am substituting in as counsel for the family." Respondent also forwarded the email to another opposing counsel on February 17, 2016.

11. On February 23, 2016, an opposing counsel emailed respondent a settlement offer. Respondent replied that he would "pass along" the written settlement offer, but later failed to inform Sheklian of the offer.

12. On February 25, 2016, respondent filed an *Ex Parte Application re Continuance of Motion to Expunge Lis Pendens* and listed himself "Special Appearance Attorney for Petitioner, Anna Sheklian." In his attached declaration, respondent stated, "I am substituting into this action as attorney of record for Petitioner. For purposes of this hearing, I will be specially appearing on Petitioner's behalf." Respondent also stated, "I spoke with Petitioner and decedent's family and they have agreed to retain me to represent them in this action." The court granted respondent's ex parte application and continued the hearing to March 24, 2016.

13. On February 29, 2016, respondent informed Brian that at an upcoming hearing, opposing counsel planned to seek sanctions against the Sheklians due to respondent's failure to remove the lis pendens that the former attorney previously filed. Brian asked respondent why respondent failed to remove it. Respondent stated that he did not remove the lis pendens because to do so might have upset an opposing counsel.

14. On March 1, 2016, respondent failed to appear at the hearing regarding Sheklian's *Petition to Invalidate Trust*. The court ruled that Sheklian did not have standing to challenge the Amended Trust because she was not a beneficiary in the original trust, and subsequently ordered Sheklian to pay \$585 in costs to the opposing parties.

15. On March 4, 2016, an opposing counsel mailed respondent a *Notice of Ruling* informing respondent of the court's orders. Respondent received the notice of ruling.

16. On March 7, 2016, respondent sent Brian a text message and indicated that the removal of the lis pendens was out for recording. Respondent also sent a text message to Brian to inform him that he would call Brian that day or the following day. Brian was unable to reach respondent and get an update regarding the case until March 17, 2016, when respondent emailed Brian. Respondent informed Brian that he sent the lis pendens for rescission during the previous week. Respondent emailed a copy of the notarized lis pendens removal which listed respondent as "Special Appearance Attorney for Petitioner Anna Sheklian." Respondent informed Brian that there was a hearing the following week regarding the lis pendens.

17. On March 18, 2016, Brian sent respondent a text message to determine the hearing date regarding the removal of the lis pendens. Respondent received the text message but did not respond to it.

18. On March 24, 2016, respondent arranged for an appearance attorney to appear at the hearing re *Motion to Expunge Notice of Pendency of Action* on respondent and Sheklian's behalf. The special appearance attorney appeared. During the hearing, the court granted opposing counsel's motion and



awarded fees and costs totaling \$3,040 to opposing counsel. On that same day, opposing counsel emailed respondent regarding the court's orders for Sheklian to remove the lis pendens and pay \$3,040 in attorney's fees. Respondent did not reply to opposing counsel's email. Respondent did not inform Brian or Sheklian of the outcome of the hearing.

19. On May 18, 2016, opposing counsel also mailed respondent a *Notice of Ruling* informing respondent of the court's orders. Respondent received the email.

20. On April 6, 2016, Brian emailed respondent regarding whether the court entered any sanctions against Sheklian. Respondent received Brian's email but did not reply to it.

21. Respondent did not pay any of the court-ordered sanctions.

22. On May 19, 2016, Sheklian paid a total of \$3,625 in sanctions.

#### CONCLUSIONS OF LAW:

23. By failing to advise the client the existence or details of the written settlement offer that opposing counsel offered in probate matter, *The Donian Living Trust*, Los Angeles Superior Court case no. BP168936, respondent failed to communicate promptly to his client all terms and conditions of a written settlement offer, in willful violation of Rules of Professional Conduct, rule 3-510.

24. By failing to take any action on the client's behalf after arranging for an appearance attorney to appear at the March 24, 2016 hearing, and thereafter failing to inform the client that respondent was withdrawing from employment, respondent constructively terminated respondent's employment without taking steps to prevent reasonably foreseeable prejudice to the client, in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

#### Case No. 16-O-16750 (Complainant: Steven Erickson)

#### FACTS:

25. On October 28, 2015, Steven Erickson retained respondent on a contingency basis to represent him in claims resulting from a battery that occurred on November 9, 2013.

26. On November 2, 2015, respondent filed two complaints on behalf of Erickson in Orange County Superior Court: *Erickson v. Luichen*, case no. 30-2015-00817890-CU-PO-CJC ( "*Luichen* matter"), and *Erickson v. K&K Insurance Group, Inc.*, case no. 30-2015-00817963 ( "*K&K* matter"). The Orange County Superior Court assigned the two cases to two different courtrooms.

27. Respondent notified Erickson that respondent filed the two complaints. After he filed the two complaints, respondent failed to take any additional action.

28. On December 8, 2015, the court scheduled a Case Management Conference for March 1, 2016 in the *Luichen* matter.

29. On February 23, 2016, respondent failed to appear at a Case Management Conference in the *K&K* matter.

30. On February 23, 2016, Erickson emailed respondent to request an update on the status of his lawsuits. Respondent received the email but did not respond to it.

31. On March 1, 2016, respondent failed to appear at the Case Management Conference in the *Luichen* matter. The court scheduled an *Order to Show Cause re Sanctions/Dismissal* for March 22, 2016, due to respondent's "failure to appear, failure to serve, and failure to file a case management conference statement."

32. On March 7, 2016, Erickson emailed respondent to inquire whether respondent needed any additional information. Respondent received the email but did not respond to it.

33. On March 22, 2016, respondent failed to appear at the *OSC re Sanctions/Dismissal*. The court dismissed *Erickson v. Luichen* without prejudice.

34. On April 4, 2016, respondent failed to appear at the Case Management Conference in the *K&K* matter. The court scheduled an *Order to Show Cause re \$250 Sanctions* for May 9, 2016 due to respondent's failure to appear at the Case Management Conference. The court also scheduled an *Order to Show Cause re Dismissal of the Complaint* due to respondent's failure to serve the complaint.

35. On April 7, 2016, Erickson sent respondent a text message to request an update on the status of the lawsuits. Respondent received the text message but did not respond to it.

36. On April 29, 2016, Erickson sent respondent two text messages to request an update on the status of the lawsuits. Respondent received both text messages but did not respond to them.

37. On May 9, 2016, respondent failed to appear at the *OSC re Sanctions and Order to OSC re Dismissal*. The court withdrew the *OSC re Sanctions* and dismissed the *K&K* matter without prejudice.

38. On May 2016, Erickson reviewed the Orange County Superior Court website and discovered that the respective courts dismissed his two lawsuits.

39. On May 20, 2016, Erickson called respondent and left him a voicemail message. Respondent received the message but did not return Erickson's phone call.

#### CONCLUSIONS OF LAW:

40. By failing to take any action on the client's behalf after filing a complaint in the *Erickson v. Luichen* matter on November 2, 2015, and thereafter failing to inform the client that respondent was withdrawing from employment, respondent constructively terminated respondent's employment without taking steps to prevent reasonably foreseeable prejudice to the client, in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

41. By failing to take any action on the client's behalf after filing a complaint in the *Erickson v. K&K Insurance Group, Inc.* matter on November 2, 2015, and thereafter failing to inform the client that respondent was withdrawing from employment, respondent constructively terminated respondent's employment without taking steps to prevent reasonably foreseeable prejudice to the client, in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

Case No. 18-O-11342 (Complainant: Cynthia Hafif)

FACTS:

42. On January 24, 2018, the State Bar Court Hearing Department filed and served upon respondent an *Order Entering Default and Order Enrolling Inactive* in case nos. 16-O-16470 and 16-O-16750. Respondent's inactive enrollment status became effective on January 27, 2018, three days after service of the court's order. Respondent received the order, and knew he was ineligible to practice law beginning on January 27, 2018 due to his involuntary inactive enrollment.

43. On January 30, 2018, respondent sent opposing counsel, Cynthia Hafif, an email related to *Stickney v. Riffey*, San Bernardino County Superior Court case no. CIVDS1604499. In the email, respondent informed Ms. Hafif of the dates respondent's clients were unavailable for depositions, and that he planned to send a special appearance attorney to request a continuance on his behalf. Respondent failed to disclose his inactive status to Ms. Hafif at any point during their discussion.

CONCLUSIONS OF LAW:

44. By sending opposing counsel an email on a client's behalf regarding a pending litigation matter while respondent was not an active member of the State Bar and without disclosing that he was ineligible to practice law, respondent held himself out as entitled to practice law in willful violation of Business and Professions Code, sections 6125 and 6126, thereby willfully violating Business and Professions Code, section 6068(a).

45. By sending opposing counsel an email regarding their pending litigation matter without disclosing his inability to practice, respondent held himself out as entitled to practice law when he knew he was not an active member of the State Bar, and thereby committed an act of moral turpitude in willful violation of Business and Professions Code, section 6106.

Case No. 18-O-11950 (State Bar Investigation)

FACTS:

46. On January 24, 2018, the State Bar Court Hearing Department filed and served upon respondent an *Order Entering Default and Order Enrolling Inactive* in case nos. 16-O-16470 and 16-O-16750. Respondent's inactive enrollment status became effective on January 27, 2018, three days after service of the court's order. Respondent received the order, and knew he was ineligible to practice law due to his involuntary inactive enrollment beginning on January 27, 2018.

47. On January 29, 2018, respondent signed and filed an ex parte *Notice of Motion to Compel Arbitration, Motion to Compel Arbitration, Declaration of Ben Eilenberg*, and a *Proof of Service* in *JK Investments v. Smith*, San Bernardino Superior Court case no. UDFS1707794. Respondent signed each document designating himself as attorney for the defendant.

48. On January 29, 2018, respondent sent an email to opposing counsel to provide notice of the ex parte motion to compel arbitration.

49. On January 30, 2018, respondent sent another email to opposing counsel to provide notice of the ex parte notice to compel arbitration.

## CONCLUSIONS OF LAW:

50. By filing an ex parte motion and sending opposing counsel two emails giving counsel ex parte notice, while he was not an active member of the State Bar, respondent held himself out as entitled to practice law and actually practiced law in willful violation of Business and Professions Code, sections 6125 and 6126, and thereby willfully violated Business and Professions Code, section 6068(a).

51. By filing an ex parte motion and sending opposing counsel two emails giving counsel ex parte notice, respondent held himself out as entitled to practice law and actually practiced law when he knew he was not an active member of the State Bar, thereby committing an act involving moral turpitude in willful violation of Business and Professions Code, section 6106.

### Case No. 18-O-12457 (Complainant: Jeffrey Dains)

## FACTS:

52. On January 24, 2018, the State Bar Court Hearing Department filed and served upon respondent an *Order Entering Default and Order Enrolling Inactive* in case nos. 16-O-16470 and 16-O-16750. Respondent's inactive enrollment status became effective on January 27, 2018, three days after service of the court's order. Respondent received the order, and knew he was ineligible to practice law due to his involuntary inactive enrollment beginning on January 27, 2018.

53. On January 30, 2018, respondent held a phone conference with opposing counsel Jeffrey Dains. During the phone conversation, respondent discussed the settlement status of *Ozean Management, Inc., et al. v. Mid-Valley Surgi-Center, Inc., et al.*, Riverside Superior Court, case no. RIC1612808, with Mr. Dains. After discussing the settlement status of the case, respondent admitted that he was ineligible to practice.

## CONCLUSIONS OF LAW:

54. By informing opposing counsel about the settlement status of a pending litigation matter while he was not an active member of the State Bar, actually practiced law in willful violation of Business and Professions Code, sections 6125 and 6126, and thereby willfully violated Business and Professions Code, section 6068(a).

55. By discussing the settlement status of *Ozean Management, Inc., et al. v. Mid-Valley Surgi-Center, Inc., et al.*, Riverside Superior Court, case no. RIC1612808 with opposing counsel Dains, respondent held himself out as entitled to practice law and actually practiced law, when he knew he was not an active member of the State Bar, and thereby committed an act involving moral turpitude in willful violation of Business and Professions Code, section 6106.

## AGGRAVATING CIRCUMSTANCES.

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** Respondent's abandonment of two clients in three court matters, failure to communicate a written settlement offer to a client, holding himself out to three opposing counsel and the court as entitled to practice law, and actually practicing law, constitutes multiple acts of wrongdoing.

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**Significant Harm to Client, Public or Administration of Justice (Std. 1.5(j)):** Respondent's misconduct caused two clients significant harm. Respondent's failure to remove a lis pendens and his abandonment of Sheklian resulted in the court sanctioning Sheklian a total of \$3,625. In addition, respondent abandoned Erickson shortly after he filed two complaints that resulted in the Superior Court dismissing both matters.

**Indifference toward rectification or atonement for the consequences of the misconduct (Std. 1.5(k)):** Despite informing a State Bar investigator that he would file a motion on Erickson's behalf to address Erickson's dismissed cases, respondent has failed to rectify his misconduct. Respondent has not had any contact with Erickson since December 2015.

#### MITIGATING CIRCUMSTANCES.

**No Prior Record of Discipline:** Respondent was admitted to practice law in California on November 8, 2008 and has no prior record of discipline. However, the absence of a prior disciplinary record for the seven years prior to the current misconduct only slightly mitigates respondent's misconduct. (See *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32, 44 [seven-and-a-half years of discipline-free practice not especially commendable].)

**Pretrial Stipulation:** By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (See *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

#### AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

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5-30-18 In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the

primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

Standard 2.7(b) states that "[a]ctual suspension is the presumed sanction for performance, communication or withdrawal violations in multiple client matters, not demonstrating habitual disregard of client interests." Given that respondent's misconduct occurred in two client matters during the same time period, respondent's misconduct does not demonstrate a habitual disregard of client interests. (See *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657 [habitual disregard of client interests found where attorney's wide range of misconduct occurred over a 10-year period]; *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363 [habitual disregard of client interests found where attorney failed to perform competently in seven matters, failed to return client files in four matters].)

In addition, standard 2.10(a) applies. It states, "Disbarment or actual suspension is the presumed sanction when a member engages in the practice of law or holds himself or herself out as entitled to practice law when he or she is on actual suspension for disciplinary reasons..." Furthermore, a violation of Business and Professions Code, section 6106 is cause for suspension or disbarment.

In the present case, respondent abandoned two clients in three matters and failed to communicate a written settlement offer to a client. In addition, after this court entered an order enrolling respondent involuntary inactive, respondent held himself out as entitled to practice law and actually practiced law in three pending litigation matters.

In aggravation, respondent's multiple acts of wrongdoing actually harmed two clients. Respondent failed to remove the lis pendens and subsequently abandoned Sheklian's matter. As a result, the court sanctioned Sheklian a total of \$3,625. In addition, respondent failed to rectify the harm he caused Erickson after he abandoned Erickson's superior court cases. Furthermore, respondent's lack of a prior disciplinary record and his willingness to enter into this stipulation acknowledging his wrongdoing only slightly mitigates his misconduct. Considering the misconduct, aggravating and mitigating circumstances, and the purpose of attorney discipline, a one-year stayed suspension and a one-year probation with conditions including 90 days' actual suspension is appropriate.

This level of discipline is also consistent with case law. In *In the Matter of Wells* (Review Dept. 2006) 4 Cal State Bar Ct. Rptr. 896, the Review Department found that Wells engaged in the unauthorized practice of law in another jurisdiction, charged an illegal and an unconscionable fee and failed to return unearned fees. It also found that Wells made misrepresentations to the State Bar which and displayed dishonesty in her interview with the South Carolina Office of the Solicitor, both of which constituted moral turpitude. The court found that Wells' good character, extreme emotional distress, and cooperation with the State Bar by entering into a stipulation as to facts mitigated her misconduct. (*Id.* at pp. 912-913.) In aggravation, Wells had a prior private reproof; committed multiple acts of wrongdoing; caused significant harm to the public, the administration of justice and her clients; collected fees from two clients that were illegal and unconscionable; interfered with the investigations by the State Bar and the State of South Carolina by giving false and misleading information, and demonstrated indifference towards the consequences of her misconduct. The Review Dept. ultimately recommended six months' actual suspension. (*Id.* at p. 917.)

Here, although both respondent and Wells committed acts of moral turpitude, the extent of respondent's misconduct is less than that of Wells. Respondent's performance harmed his clients, however; his misconduct occurred over the course of five months. Later, when respondent was involuntarily inactive, he held himself out as entitled to practice law to three opposing counsel and a court, and he both filed an ex parte motion and discussed a settlement with opposing counsel while ineligible to practice. In addition, respondent did not make any misrepresentations to the State Bar, and instead was candid during the investigation matters in which he acknowledged that he knew he was ineligible to practice law and unreasonably thought his actions would protect his clients. Respondent also lacks a prior record of discipline, unlike Wells who had a prior private reproof. Accordingly, the misconduct warrants a level of discipline less than what the court imposed in *Wells*. Thus, a one-year suspension, stayed, and one-year probation with conditions including 90 days' actual suspension and rule 9.20 compliance is appropriate to protect the public, the courts, and the legal profession.

#### **DISMISSALS.**

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
16-O-16470	Three	Rules of Professional Conduct, rule 3-110(A)
16-O-16750	Five	Rules of Professional Conduct, rule 3-110(A)
16-O-16750	Seven	Rules of Professional Conduct, rule 3-110(A)

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of May 18, 2018, the discipline costs in this matter are \$11,507. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

#### **EXCLUSION FROM MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT**

Respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

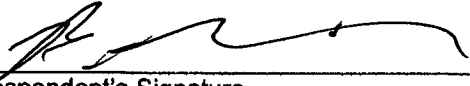
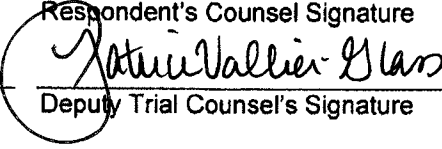
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In the Matter of BENJAMIN A. EILENBERG	Case number(s): 16-O-16470-YDR, et al.
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### SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

June 1, 2018		Benjamin A. Ellenberg
Date	Respondent's Signature	Print Name
	Respondent's Counsel Signature	Print Name
6/1/18		Patrice Vallier-Glass
Date	Deputy Trial Counsel's Signature	Print Name

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5-30-18



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In the Matter of:  
BENJAMIN A. EILENBERG

Case Number(s):  
16-O-16470-YDR, et al.

### ACTUAL SUSPENSION ORDER

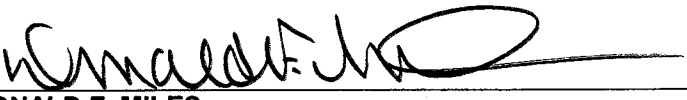
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☒ The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- ☒ All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Date

6/14/18

  
DONALD F. MILES  
Judge of the State Bar Court

## CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on June 14, 2018, I deposited a true copy of the following document(s):

### STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

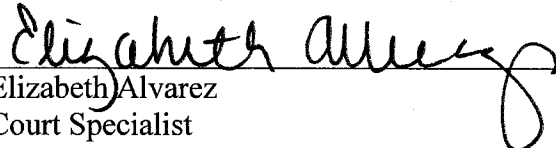
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

BENJAMIN A. EILENBERG  
LAW OFFICES OF BEN EILENBERG  
3600 LIME ST  
STE 125  
RIVERSIDE, CA 92501 - 0911

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Patrice N. Vallier-Glass, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 14, 2018.

  
Elizabeth Alvarez  
Court Specialist  
State Bar Court